

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2016

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.Nos.26698 and 26699 of 2015

M/s.Datafield India Private Limited,
481, Dr, Nanjappa Road,
Coimbatore-641 018,
represented by its
Managing Director M.K.Kannan.

... Petitioner in
both writ petitions

Vs.

The Development Commissioner,
Ministry of Commerce & Industries,
Department of Commerce,
MEPZ Special Economic Zone,
Administrative Office Building,
National Highway-45, Tambaram,
Chennai-600 045.

.. Respondent in
both writ petitions

Both these writ petitions have been filed, under Article 226 of the Constitution of India praying for the issuance of Writs of Mandamus, directing the respondent to invoke the jurisdiction, under the Foreign Trade Policy 2009-2014 and the Foreign Trade Policy 2015-2020, in relation to the Central Sales Tax reimbursement, for the financial years 2013-14 and 2014-15, respectively.

For Petitioner : Mr.V.Srinivasan

For Respondent : Mr.V.P.Sengottuvel, SCGSC

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COMMON ORDER

Heard.

2 As the issues involved in both the writ petitions are common in nature, both the writ petitions are being heard, considered and disposed of, by this common order.

3 Both the writ petitions had been filed, praying that this Court may be pleased to issue Writs of Mandamus, to direct

the respondent to invoke the jurisdiction, under the Foreign Trade Policy 2009-2014 and the Foreign Trade Policy 2015-20, relating to the reimbursement of the Central Sales Tax, paid by the petitioner, for the financial years 2013-14 and 2014-15, respectively.

4 In the above writ petitions, it has been stated that the petitioner is a private limited company, incorporated under the Companies Act, 1956. The petitioner Company is a 100% Export Oriented Unit, engaged in the business of manufacturing telephone cords and charger cable assemblies. The 100% Export Oriented Unit can procure the raw materials, without duty incidence and export the manufactured goods with Net Foreign Exchange positive. It has been further stated that the customs duty for the imports of the raw materials are Nil, under the customs benefit notification 52/2003, and the central excise duty is Nil, on producing CT.3 certificate, under CE notification No.22/2003. The procurement of the materials with State levy is vated, and the refund of the Central Sales Tax paid is taken care of by the Development Commissioner concerned.

5 The procedure for tax exemption for the purchase of the materials from the Special Economic Zone is to pay the Central Sales Tax and to get the reimbursement of the same. It has been stated that the petitioner is entitled for reimbursement of the Central Sales Tax, paid on the goods manufactured in India, as per paragraph 6.11(c)(i) of the Foreign Trade Policy 2009-2014 and 2015-20. But, the only condition in the Foreign Trade Policy is that the goods should have been manufactured in India.

6 It has been further stated that the respondent had allowed reimbursement of the Central Sales Tax paid on the materials procured by the petitioner, from the Special Economic Zone, upto the period 31.3.2013, based on the same Foreign Trade Policy 2009-2014. However, when the petitioner had claimed reimbursement of the Central Sales Tax, paid on the materials procured by the petitioner from the Special Economic Zone, for the period 2013-14, the respondent, vide letter, dated 30.4.2014, had denied the reimbursement of the Central Sales Tax paid by the petitioner, even though the payment of sales tax is exempted in such cases.

7 The respondent, vide letter, dated 22.1.2015, had stated that under the existing provisions already available in the relevant Foreign Trade Policy and the Central Sales Tax Act, the supply of goods to the Export Oriented Units shall be treated as Deemed Exports and the payment of the Central Sales Tax is exempted. Hence, the petitioner had been advised to approach the Sales Tax authorities, for exemption of the payment of the Central Sales Tax, for the purchases made from the Special Economic Zone unit, located at Noida-SEZ. The said

advice of the respondent is illogical and impracticable and it is misleading, being contrary to the Foreign Trade Policy. The claim of the petitioner is for the reimbursement of the Central Sales Tax already paid. Hence, the question of approaching the sales tax authorities for exemption of the payment of the Central Sales Tax already paid, especially, when the transactions had been concluded, would not arise. As the Special Economic Zone supplier from Noida had continued their supply of materials with the Central Sales Tax and as the petitioner had paid the Central Sales Tax against the 'C' Form, for the procurement of the materials from the Special Economic Zone, the petitioner had made a claim for the reimbursement of the Central Sales Tax already paid, for the periods 2013-14 and 2014-15, vide letter, dated 16.5.2015.

8 It has been further stated that the respondent had failed to appreciate that exemption is granted on the payment of the Central Sales Tax, for the sale of the materials by the Special Economic Zone unit, to the Export Oriented Units. Therefore, the petitioner had claimed only the reimbursement of the Central Sales Tax paid for the materials procured from the Special Economic Zone, against the 'C' Form. After the matter had been represented before the Ministry of Commerce and Industry, the Department of Commerce, Directorate General of Foreign Trade, Government of India, it was clarified in the Appendix-6H of the Foreign Trade Policy 2015-20 that the Export Oriented Units would be entitled to full reimbursement of the Central Sales Tax paid by them, on the purchases made from the Domestic Tariff Area or Export Oriented Unit or Special Economic Zone or Electronics Hardware Technology Parks or Software Technology Parks or Bio-Technology Parks. Thus, it is clear that there is no change in the provisions for the entitlement of the reimbursement of the Central Sales Tax to the Export Oriented Units and the definition of the Domestic Tariff Area in the Foreign Trade Policy 2015-20 from that of the Foreign Trade Policy 2009-14.

9 It has been further stated that there is no change in the practice of the Special Economic Zone, charging the Central Sales Tax, on the materials supplied to the Export Oriented Units. However, the respondent had failed to consider the claim of the petitioner for the reimbursement of the Central Sales Tax paid by the petitioner on the materials procured from the Special Economic Zone units, for the period 2013-14 and 2014-15, stating that the amended procedure takes effect, prospectively, and therefore, it does not apply to the prior period, vide letter, dated 15.6.2015.

10 The learned counsel appearing on behalf of the petitioner had placed before this Court an order passed by the learned Single Judge of this Court, dated 30.3.2016, made in

W.P.Nos.15646 and 26004 of 2014, in support of the claim made by the petitioner. The learned Single Judge, by his order, dated 30.3.2016, has set aside the communication, dated 28.4.2014, issued by the Development Commissioner, Madras Export Processing Zone, Chennai, and the communication, dated 11.4.2014, issued by the Secretary, Ministry of Commerce and Industry and had, consequently, directed the Development Commissioner, Madras Export Processing Zone, Chennai, to grant refund of the claims, to the petitioner therein, on the purchases made from the 100% Export Oriented Unit. The learned Single Judge had stated, in his order, dated 30.3.2016, that, when the policy provides for the reimbursement of the Central Sales Tax, under paragraph 6.11, the said objective had been prevented or diluted by the Appendix. He had further held that the Appendix is meant for giving effect to the rights contained in the policy and not to frustrate the operation of the substantive right.

11 Mr.V.P.Sengottuvel, learned Senior Central Government Standing Counsel, appearing on behalf of the respondent, had submitted that paragraph 6.11 of the Foreign Trade Policy 2009-2014 had made it clear that the reimbursement of the Central Sales Tax would arise only for the supply of the materials from the Domestic Tariff Area to the Export Oriented Unit / Electronics Hardware Technology Parks / Software Technology Parks / Bio-Technology Parks. A clarification, to that effect, had also been issued in the Appendix-14-I-I. It makes it clear that the Export Oriented Units and the other units mentioned therein, would be entitled to full reimbursement of the Central Sales Tax paid by them, on the purchases made from the Domestic Tariff Area, for the production of goods and services, as per the Export Oriented Units Scheme, based on certain terms and conditions. The petitioner would not be entitled for such reimbursement of the Central Sales Tax, said to have been paid by it, as the materials had been purchased by the Export Oriented Unit, from an another Export Oriented Unit. In fact, a clarification had been issued by the Under Secretary, Ministry of Commerce and Industry, Department of Commerce, EOU Section, dated 11.4.2014, by way of an Office Memorandum, stating as follows :

"I. It is a settled principle of interpretation that tax statutes and guidelines have to be interpreted strictly. The intention of the legislature or rule making body has to be derived from the exact words used in the statutes/rules. Para 6.11 and para 9.21 of Foreign Trade Policy read with Appendix 14-I-I does not provide for reimbursement of CST paid on goods supplied from one EOU to another EOU. Therefore, the claim of M/s.Hospira Healthcare India Private Limited cannot be considered.

II. However, since it is also the National

Policy to promote exports and to reimburse of taxes suffered on goods exported from India, DGFT may consider a suitable amendment in the FTP as deemed fit."

12 Further, the Assistant Development Commissioner, Government of India, Ministry of Commerce and Industry, by his communication, dated 15.6.2015, had made it clear that the Foreign Trade Policy 2015-20, released by the Government of India, has permitted the reimbursement of the Central Sales Tax from DTA/SEZ/EOU units, and that the said provision would take effect, prospectively. It had also been stated that the new provision would not apply, retrospectively, for the prior periods. Therefore, the request of the petitioner, for reimbursement of the Central Sales Tax, for the period mentioned, in its letter, dated 16.5.2015, had been rejected.

13 From the submissions made by the learned counsel appearing on behalf of the petitioner, as well as the learned counsel appearing on behalf of the respondent and on perusal of the records available, it is noted that the Assistant Development Commissioner, Government of India, Ministry of Commerce and Industry, by his communication, dated 15.06.2015, had made it clear that the Foreign Trade Policy 2015-20, released by the Government of India, has permitted the reimbursement of the Central Sales Tax from DTA/SEZ/EOU units and that the said provision would take effect, prospectively. It has also been stated that the said provision would not apply retrospectively, for the prior periods. However, the petitioner has not challenged the said communication, till date.

14 In fact, a clarification has been issued by the Under Secretary, Ministry of Commerce and Industry, Department of Commerce, EOU Section, dated 11.4.2014, by way of an Office Memorandum. In the said office memorandum, it has been stated that paragraph 6.11 and paragraph 9.21 of the Foreign Trade Policy, read with Appendix 14-I-I, does not provide for the reimbursement of the Central Sales Tax paid on goods supplied from one Export Oriented Unit to another Export Oriented Unit. It has also been suggested that the Directorate General of Foreign Trade may consider a suitable amendment, in the Foreign Trade Policy, as deemed fit, in order to include a clause, providing for the reimbursement of the Central Sales Tax, for the goods supplied from one Export Oriented Unit to another Export Oriented Unit.

15 The above facts make it clear that it has not been the intention of the Foreign Trade Policy 2009-2014, for the reimbursement of the Central Sales Tax paid on the goods supplied from one Export Oriented Unit to another Export Oriented unit. In such circumstances, this Court is of the

considered view that the reliefs prayed for by the petitioner, in the above writ petitions, cannot be granted. Hence, both writ petitions stand dismissed. No costs. However, it goes without saying that it may be open to the petitioner to challenge the Office Memorandum, issued by the Ministry of Commerce and Industry, Department of Commerce, EOU Section, dated 11.4.2014, and the communication, dated 15.06.2015, issued by the Assistant Development Commissioner, Government of India, Ministry of Commerce and Industry, if so advised, in the manner known to law. Unless the said communications, clarifying the position relating to the Foreign Trade Policy 2009-14 and the Foreign Trade Policy 2015-20, are challenged and set aside, such clarifications would hold the field, with regard to the claims made by the petitioner, for the reimbursement of the Central Sales Tax, paid in respect of the goods supplied from one Export Oriented Unit to another Export Oriented Unit, relating to the financial years 2013-14 and 2014-15.

Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

To

The Development Commissioner,
Ministry of Commerce & Industries,
Department of Commerce,
MEPZ Special Economic Zone,
Administrative Office Building,
National Highway-45, Tambaram,
Chennai-600 045.

+1 cc to Mr.V.P.Sengottuvel,advocate,sr.42682

sr(co)
krd 26/8

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